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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/742,283
Filing Date: December 22, 2000
Appellant(s): PARKVALL ET AL.

John R. Lastova
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/21/2006 appealing from the Office action mailed 3/21/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 1, 3, 5, 8-16, 18, 21-28, 30, 32, 34-43, and 46-50 are pending. Appellant appears to have inadvertently failed to identify claim 18 as pending in the first line of the Status of Claims. Appellant does, however, properly list claim 18 as standing rejected under 35 USC 103 as being unpatentable under Yuen in view of Balachandran and further in view of Labonte.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

20030185286	YUEN	10-2003
20020036992	BALACHANDRAN ET AL	3-2002
6,522,888	GARCERAN ET AL	2-2003
5,991,286	LABONTE ET AL	11-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 26, 27, 30, 32, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuen (US 20030185286A1) in view of Balachandran et al. (US 20020036992A1), hereafter Balachandran.

- In regards to Claims 1, 26, 27, and 38,

Yuen discloses a handoff method in a cellular spread spectrum communications network/system. Referring to Fig. 22, Yuen show mobile 60 (first node) initially communicating data with base station 61 (second node) by both transmitting (first channel) and receiving (second channel; Abstract; claim 1,26,38 – method and units in mobile radio system where data packets are communicated from first node to second node/between one or more base stations and wireless user units over first channel and feedback signal is sent from second node to first node over a second channel).

Yuen shows that mobile 60 may receive a plurality of signals from a plurality of base stations 61, 62 during a handoff operation. Yuen discloses mobile 61 has a

monitoring means for monitoring the signal quality of the first received signal and determines the signal quality of the signal received from base station 61 as compared to the signal quality of the signal received from base station 62 and/or a predetermined threshold through a comparison means (Pg. 10-11, paragraphs 173-174; claim 1,26 – first node detector determines condition/signal quality of second channel/uplink).

If the quality of the signal received from base station 61 falls below the predetermined threshold and/or second quality, a handoff is initiated and subsequent data to be transmitted is queued (delayed) until the handoff is completed and channel quality is sufficient to transmit the stored data (Abstract; Pg. 10-11, paragraphs 168-177; claim 1,26 – first node scheduler delaying further transmission over first channel/downlink until quality of second channel/uplink exceeds predetermined threshold; claims 1,27 - schedules transmission over first channel/downlink based on whether determined condition of second channel/uplink is sufficient).

Yuen does not explicitly disclose the use of an ACK, NACK or lost feedback signal within an ARQ protocol sent back to the first node from the second node over the second channel.

Balachandran discloses method and apparatus for packet size dependent link adaptation for wireless packets. Balachandran discloses the use of ACK/NACK feedback signals within the ARQ protocol for providing reliable data transmission (Pg. 1-2, paragraphs 3, 4, 7, 19-29; claim 1,26 – feedback signal is an ARQ protocol acknowledge signal, negative acknowledge signal or lost signal corresponding to a data

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packet transmitted over the first channel; claim 1,26 – determining condition of second channel is sufficient to accurately receive feedback signal).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method and system of Yuen by utilizing an ARQ protocol feedback signal between the nodes, as shown by Balachandran. ARQ is a protocol well-known in the art for providing reliable communications. The use of ARQ in the system and method of Yuen would provide verification that the signal quality determined to be sufficient for data transmission was maintained throughout the transmission and reception was performed properly.

- In regards to Claim 30 and 32,

Yuen discloses a handoff method in a cellular spread spectrum communications network/system that covers all limitations of the parent claims.

Yuen discloses that the sufficiency of the signal quality may be determined through typical parameters used for signal quality, such as probability of error and signal-to-noise ratio (Pg. 11, paragraph 178; claim 32 – the sufficiency of the second channel is determined so that a probability of error in the received feedback signal is below an error threshold).

Signal-to-interference ratio is another such typical parameter known in the art (claim 30 – predetermined threshold is a signal-to-interference ratio)

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3. Claims 13 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuen in view of Balachandran as applied to claims 1 and 26 above, and further in view of Garceran et al. (US006522888B1), hereafter Garceran.

- In regards to Claims 13 and 37,

Yuen discloses a handoff method in a cellular spread spectrum communications network/system that covers all limitations of the parent claims.

Garceran discloses a method in a wireless radio communication system for communicating data from base stations to mobile users over forward- and reverse-link channels. Garceran shows that transmission control from base station to mobile unit may be controlled based upon conditions other than uplink signal quality, including traffic load at the serving base station and the propagation environment (frequency and speed; Doppler frequency; Col. 3, lines 15-25, 32-45, 50-61; claim 13,37 – controlling transmission over first channel/downlink without regard to the condition/signal quality of the second channel/uplink when another condition is detected).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method and system of Yuen by controlling transmission based upon detected conditions other than uplink signal quality, as shown by Garceran, thereby enabling the system to adapt data communication based upon multiple varying conditions of the network, rather than simply based on channel quality.

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4. Claims 3, 5, 8-12, 14-16, 18, 21, 22, 28, 34-36, 39-41, 43, 46, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuen (US 20030185286A1) in view of Balachandran et al. (US 20020036992A1), hereafter Balachandran, and further in view of Labonte et al. (US005991286A), hereafter Labonte.

- In regards to Claims 3, 9-12, 14, 16, 21, 22, 28, 34-36, 39, 41, 46, and 47, Yuen discloses a handoff method in a cellular spread spectrum communications network/system that meets the limitations of parent claims 1 and 26.

Referring to Fig. 22, Yuen show mobile 60 initially communicating data with base station 61 by both transmitting and receiving (Abstract; claim 14,39 – method and units in mobile radio system where data packets are communicated from first node to second node/between one or more base stations and wireless user units over first channel and feedback signal is sent from second node to first node over a second channel).

Yuen shows that mobile 60 may receive a plurality of signals from a plurality of base stations 61, 62 during a handoff operation (claim 22,47 – wireless user is communicating with two base stations in a soft handover). Yuen discloses mobile 61 has a monitoring means for monitoring the signal quality of the first received signal and determines the signal quality of the signal received from base station 61 as compared to the signal quality of the signal received from base station 62 and/or a predetermined threshold through a comparison means (Pg. 10-11, paragraphs 173-174; claim 14,39 – first node detector determines condition/signal quality of uplink).

If the quality of the signal received from base station 61 falls below the predetermined threshold and/or second quality, a handoff is initiated and subsequent data to be transmitted is queued (delayed) until the handoff is completed and channel quality is sufficient to transmit the stored data (Abstract; Pg. 10-11, paragraphs 168-177; claim 14 – first node scheduler delaying further transmission over first channel/downlink until quality of second channel/uplink exceeds predetermined threshold; claims 14,39 – schedules transmission over first channel/downlink based on whether determined condition of second channel/uplink is sufficient; claim 9,21,46 – transmitting data packets after a preset delay period).

Yuen does not explicitly disclose the use of an ACK, NACK or lost feedback signal within an ARQ protocol sent back to the first node from the second node over the second channel.

Balachandran discloses method and apparatus for packet size dependent link adaptation for wireless packets. Balachandran discloses the use of ACK/NACK feedback signals within the ARQ protocol for providing reliable data transmission (Pg. 1-2, paragraphs 3, 4, 7, 19-29; claim 14,39 – feedback signal is an ARQ protocol acknowledge signal, negative acknowledge signal or lost signal corresponding to a data packet transmitted over the first channel; claim 14,39 – determining condition of second channel is sufficient to accurately receive feedback signal).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method and system of Yuen by utilizing an ARQ protocol feedback signal between the nodes, as shown by Balachandran. ARQ is a protocol

well-known in the art for providing reliable communications. The use of ARQ in the system and method of Yuen would provide verification that the signal quality determined to be sufficient for data transmission was maintained throughout the transmission and reception was performed properly.

Yuen discloses the above method as applied to a remote station as a first station, in communication with a base station as a second station, during hand-off. Yuen does not explicitly disclose the base station acting as the first station and performing the functions of signal quality determination and data scheduling/delaying based upon the signal quality determination of feedback communicated from a second, remote station.

Labonte discloses a method and cellular system for communicating data packets between a base station and a mobile user over uplink and downlink channels. Referring to Fig. 3, Labonte shows a signal quality measurement is made of both the uplink and downlink channels at the base station and/or mobile station (Col. 7, lines 32-45; claim 14,39 – method implemented in base station; claim 3,16,28,41 – first node detector to determine condition/signal quality of first channel/downlink; claim 10,11,34,35 – first node is a base station/wireless unit in a radio communications network and second is a wireless unit/base station; claim 10,11,34,35 – first channel is a downlink/uplink and the second channel is an uplink/downlink; claim 12,36 – first node is a radio network controller coupled to one or more base stations in a radio network and second node is a wireless user unit).

A determination is made as to whether the signal quality uplink and downlink is sufficient for packet data communications (Col. 7, lines 50-53; claim 3,16,28,41 – first

node controls/schedules transmission over first channel/downlink based on determined conditions of first/downlink and second/uplink channels).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method and system of Yuen by enabling both the mobile and base station to perform signal quality determination and data scheduling/delaying based upon the signal quality determination, as shown by Labonte. This modification would permit data transmission based on handoff processing to be controlled by either the mobile or the base station, ensuring transmission and/or reception on sufficient quality channels in either direction to and/or from both the base station and/or mobile.

- In regards to Claim 5, 8, 15, 18, 40, and 43,

Yuen discloses a handoff method in a cellular spread spectrum communications network/system that covers all limitations of the parent claims.

Yuen discloses that the sufficiency of the signal quality may be determined through typical parameters used for signal quality, such as probability of error and signal-to-noise ratio (Pg. 11, paragraph 178; claim 5,18,43 – the sufficiency of the second channel is determined so that a probability of error in the received feedback signal is below an error threshold).

Signal-to-interference ratio is another such typical parameter known in the art (claim 8,15,40 – predetermined threshold is a signal-to-interference ratio)

5. Claims 23-25 and 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuen in view of Balachandran and Labonte as applied to claims 14, and 39 above, and further in view of Garceran et al. (US006522888B1), hereafter Garceran.

- In regards to Claims 23-25 and 48-50,

Yuen discloses a handoff method in a cellular spread spectrum communications network/system that covers all limitations of the parent claims.

Garceran discloses a method in a wireless radio communication system for communicating data from base stations to mobile users over forward- and reverse-link channels. Garceran shows that transmission control from base station to mobile unit may be controlled based upon conditions other than uplink signal quality, including traffic load at the serving base station and the propagation environment (frequency and speed; Doppler frequency; Col. 3, lines 15-25, 32-45, 50-61; claim 23,48 – controlling transmission over first channel/downlink without regard to the condition/signal quality of the second channel/uplink when another condition is detected; claim 24,49 – detected condition is when a Doppler frequency of the uplink exceeds a threshold; claim 25,50 – detected condition is when a load of a cell corresponding to the base stations is less than a threshold).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method and system of Yuen by controlling transmission based upon detected conditions other than uplink signal quality, as shown by Garceran,

thereby enabling the system to adapt data communication based upon multiple varying conditions of the network, rather than simply based on channel quality.

(10) Response to Argument

Appellant's arguments on pgs. 7-19 of the Brief filed 6/21/2006 have been fully considered but they are not persuasive.

- On pgs. 8 and 11 of the Brief, Appellant contends the Examiner has admitted that Yuen lacks any mention of a feedback signal, a feedback channel, or determining the quality of a feedback channel.
- The Examiner respectfully disagrees. As shown in the Final Rejection, Yuen discloses an uplink and downlink between a mobile unit and one or more base stations. Yuen shows transmission on the uplink is controlled based upon the determined quality of the downlink. The Examiner has clearly shown that the claimed feedback signal/channel reads upon this downlink signal/channel. The Examiner has only admitted that Yuen fails to disclose the feedback signal being an acknowledge, negative acknowledge or lost signal according to the ARQ protocol.
- On pg. 8 of the Brief regarding claims 1 and 26, Appellant contends that Yuen lacks basic communication structure required by the claims, that data packet communication already be established between the first and second nodes.

- The Examiner respectfully disagrees. Firstly, this basic structure purported to be required by claims 1 and 26 has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Further, the cited quotation from the claims does not limit the claim as suggested by Appellant. Claiming a method in a system in which “data packet are communicated from a first node over a first channel to a second node and a feedback signal is sent back to the first node from the second node over a second channel” does not require that communication is already established. The steps of the claimed method would be applicable at communication establishment as well as when communication is already established. Finally, even if it is assumed that the claims are so limited, Yuen does disclose that such communication has been established, contrary to Appellant’s assertions, since the mobile unit in Yuen is communicating with a base station prior to handoff processing and further communicating with another base station that provides an adequate downlink signal after the handoff has completed.

- On pg. 9 of the Brief regarding claims 1 and 26, Appellant contends that Yuen does not meet the limitations of the claims because Yuen discloses the method of the claims with consideration to 3 separate nodes, a mobile and two base stations, rather than 2 separate nodes, as claimed.
- The Examiner respectfully disagrees. The Examiner has interpreted the claims *in light of the specification* (emphasis added) and, therefore, Yuen properly meets the contested claim limitations. Referring to pgs. 4-7, 11-12 and Figs. 5, 6, and 8 of Appellant's disclosure, Appellant discloses the preferred embodiment of the invention as being when a mobile unit is involved in a soft handover between two base stations. Appellant discusses, at length, that the present invention, specifically the steps of determining the condition of the second channel from the second node to the first node and delaying further transmission of data packets from the first node over the first channel to the second channel until the quality of the second channel exceeds a threshold, is of "particular importance if the user is in soft handover" (pg. 12, line 25). The Examiner has, therefore, mapped the claimed first node to the mobile unit in Yuen, the claimed first channel to the uplink channel in Yuen, the claimed second node to the base stations involved in Yuen's handoff procedure and the claimed second channel to the Yuen's downlink channel between the base stations and the mobile. These interpretations have not been "force fit" to the claim language, as asserted by

Appellant on pg. 9 of the Brief, but rather are made in light of Appellant's own disclosure of preferred embodiments of the present invention.

- On pgs. 9-10 of the Brief, Appellant contends that Yuen does not disclose the scheduling of *further* (emphasis added by Appellant) transmissions of data packets or delaying of further transmission because Yuen discloses the mobile unit is handed off from one base station to another and, therefore, data packets have not yet been transmitted to the target base station.
- The Examiner respectfully disagrees. As shown above, the Examiner's reliance on the disclosure of Yuen, in which a mobile is in communication with two base stations during soft handover, properly meets the claim limitations of a first and second node communicating over first and second channels, respectively, where the claimed second node is interpreted to be the base stations in Yuen, based upon evidential support taken directly from Appellant's own disclosure of preferred embodiments of the invention. Appellant's assertion that Yuen lacks disclosure of "further transmission" results from this previous argument, since Appellant contends that transmission from the mobile to the target base station constitutes *new* transmission, rather than *continued* transmission. However, based upon the Examiner's showing of a proper interpretation of first and second nodes communicating over first and second channels with respect to Yuen's disclosure, the mobile in Yuen is shown to initiate communication with the first

base station and then, after handoff processing has completed and the downlink signal to the mobile exceeds a threshold, continue its transmission (or “further transmission”) with the target base station, thereby meeting the limitations of the claims.

- On pg. 10-11 of the Brief, Appellant contends that the transmission delay in Yuen is linked to synchronization of the mobile with the target base station rather than to the “quality of the second channel exceeding a predetermined threshold”, as claimed.
- The Examiner respectfully disagrees. Yuen discloses that data to be transmitted is queued (delayed) until the handoff is completed. While this handoff processing does include synchronization between the mobile and base station, as asserted by Appellant, it also includes the determination that downlink channel quality is sufficient to resume transmission, including the data that was queued during handoff processing, since the mobile is continually monitoring the received downlink quality to control transmission on the uplink, even if a handoff to a new base station has recently completed. Therefore, the claim limitations are met by the cited disclosure of Yuen.
- On pg. 11-12 of the Brief, Appellant contends that simply adding ARQ, taught in Balachandran, to Yuen does not overcome the deficiencies in Yuen because even if combined, the references do not disclose: 1) the first node

determining a condition of the second channel from the same second node to the same first node, 2) the first node determining whether the condition of the second channel is sufficient for the first node to accurately continue receiving a feedback signal from the second node over that same second channel, and 3) based on the determined condition of the second channel, the first node scheduling further transmission of data over the first channel including delaying further transmission of data packets over the first channel until the quality of the second channel exceeds a predetermined threshold.

- The Examiner respectfully disagrees. All of the alleged deficiencies are shown to be disclosed in Yuen alone. Regarding 1), the Examiner has shown that it is not a requirement of the claims that the determining of the condition of the second channel from the second node to the first node be the same second node. As disclosed by Appellant, the claimed "second node" constitutes two base stations in communication with a mobile during soft handover. Therefore, the reading of Yuen's disclosure over the claims is proper. Regarding 2), the Examiner has shown that the mobile operates to monitor the downlink (feedback) signal from its serving base station to determine if it can accurately continue receiving the downlink (feedback) signal from that base station, therefore meeting the claim limitation. Further, regarding 3), because the Examiner has mapped the claimed first node to the mobile in Yuen, the scheduling of further transmission from the mobile to a target base station after successful completion of handoff processing meets

the claim limitation, since the mobile initiates communication with the first base station and then *continues* transmission after handoff is completed and the target base station supplies the mobile a downlink (second channel) signal quality that exceeds the required threshold.

- On pg. 13-14 of the Brief, Appellant contends that the combination of Yuen and Balachandran is based upon improper hindsight because neither reference appreciates the problem addressed by the inventors, recognizing the advantages of taking the opposing direction channel quality into account when scheduling data for the initial direction.
- The Examiner respectfully disagrees. The problem addressed by the inventors is seen in the disclosure of Yuen alone, where it is clearly shown that the quality of a downlink signal is monitored to control transmissions over the uplink, thereby meeting the limitations of the claim. The combination of Yuen with Balachandran is not relied upon to disclose this limitation.
- On pgs. 14-16 and 18 of the Brief, Appellant contends that the rejections based on the combination of Yuen, Balachandran and Labonte is based on improper hindsight and fails to teach claimed features of claims 14 and 39. Appellant contends that Labonte is lacking in meeting the claim limitations that render the rejections incomplete and improper.

- The Examiner respectfully disagrees. As shown above, Yuen is shown to meet the claim limitations of delaying further transmission until the quality of the second channel exceeds a predetermined threshold. Labonte is not relied upon to meet this limitation. Contrary to Appellant's assertion, Labonte is considered as a whole. However, it is not necessary for Labonte to teach all of the specifics of the claims in order to be properly combined with Yuen and Balachandran. Labonte is relied upon to demonstrate the advantages of applying a method for controlling transmission based upon measured signal quality at both ends of a communication connection, rather than just at one end as shown in Yuen and Balachandran. Labonte's disclosure of advantageously applying a transmission control method at both ends of a communication connection is directly applicable to the methods of Yuen and Balachandran. Therefore, the combination of references and claim rejections based thereof are proper.

- On pg. 16 of the Brief, Appellant contends that, because Yuen discloses a mobile involved in handoff between two base stations, Yuen does not disclose scheduling of further packet transmissions in one direction in an already-established connection based on the condition of the channel in the opposite direction. Appellant asserts that the connections to the respective base stations are separate connections such that communication from the

mobile to the target base station after handoff has completed constitutes new rather than continuing, or "further", transmission.

- The Examiner respectfully disagrees. Firstly, the claims of the present application do not recite limitations that require an already-established connection. Further, the portion of the claims that Appellant cites as requiring this previously-established connection is in the preamble of the claims and, therefore, not given patentable weight. However, even if it is presumed that this limitation exists, Yuen meets it by showing transmission from the mobile to the first base station and then further transmission to the second base station after handoff. The Examiner's use of the two base stations in Yuen as the claimed "second node" is supported by Appellant's own specification, which emphasizes the applicability of the claimed invention to soft handover situations. Therefore, the claim rejections are proper.

- On pg. 17 of the Brief, Appellant contends Yuen's disclosure of delaying transmission is different from that claimed. Appellant asserts that Yuen's delay is based upon synchronization time between a mobile and target base station during handoff. Appellant contends that the claimed delay has nothing to do with handoff or synchronization but, rather, is based upon waiting for the conditions on the feedback channel to improve before continuing transmission.

- The Examiner respectfully disagrees. Firstly, Examiner has shown that Appellant's disclosure emphasizes applicability in a soft handoff scenario, which is described by Appellant as the preferred embodiment of the claimed invention. Further, any differences between the claimed delay and the disclosure of delaying transmission in Yuen are irrelevant as they are not cited in the pending claims. Yuen shows that data is queued (delayed) until handoff processing is completed. Such handoff processing, which may include steps of synchronization between the mobile and base station, also includes the mobile receiving a downlink (second) channel signal that exceeds a predetermined threshold, as required by the claim. Therefore, the claim rejections are proper.
- On pg. 19 of the Brief, Appellant contends that none of the cited references discloses detecting another condition and controlling transmission over the first channel without regard to the condition of the second channel when the other condition is detected. Appellant asserts that the Examiner has failed to establish whether Garceran teaches controlling transmission over the first channel *without regard to the condition of the second channel* (emphasis added by Appellant).
- The Examiner respectfully disagrees. The citations from Garceran noted in the claim rejections disclose communication control between a mobile and base station triggered by a signal quality threshold being met OR other

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information such as operating conditions, traffic load, frequency, speed, etc.

As such, Garceran shows that "other information" triggers are used *instead* of a signal quality trigger (without regard to signal quality), thereby meeting the claim limitations.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Gregory B. Sefcheck

GBS *GBS*

11-17-2006

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